SUPREME COURT OF VICTORIA

COURT OF APPEAL

JULIAN TAYLOR — Applicant

v

THE QUEEN — Respondent

JUDGES:	PRIEST and BEACH JJA
WHERE HELD:	MELBOURNE
DATE OF HEARING:	Determined on the papers
DATE OF JUDGMENT:	13 May 2021
MEDIUM NEUTRAL CITATION:	[2021] VSCA 131
JUDGMENT APPEALED FROM:	*DPP v Taylor* (Unreported, County Court of Victoria, 14 August 2018 (Conviction); [2018] VCC 2271 (Sentence)) (Judge Brookes)

CRIMINAL LAW – Application for leave to bring second appeal – *Criminal Procedure Act 2009*, ss 326A and 326C – Abuse of process – Registrar refusing to seal and accept documents for filing on the grounds that proposed application is an abuse of process – Review of Registrar's decision – *Supreme Court (Criminal Procedure) Rules 2017*, r 1A.04 – Application for review refused.

APPEARANCES:	Counsel	Solicitors
For the applicant	No appearances	
For the respondent		

PRIEST JA
BEACH JA:

1 On 14 August 2018, the applicant — charged under the name Julian Richard Taylor (formerly known as Steven Mark Bahntoff; Steven Robert Barr; Steven Robert Parker; Julian Mark Bahntoff and Steven Robert Bahntoff) — was found guilty in the County Court of four charges of using a false document;[1] one charge of perjury;[2] seven charges of obtaining a financial advantage by deception;[3] and one charge of making, using or supplying identification information.[4]

2 On 20 November 2018, the trial judge sentenced the applicant to a total effective sentence of 2 years and 11 months, with a non-parole period of 2 years and 2 months. An amount of 752 days pre-sentence detention was declared.[5]

3 On 5 July 2019, this Court refused the applicant leave to appeal against his convictions and sentence. The Court's reasons for refusing the applications for leave[6] set out the relevant background and procedural history of this matter.

4 On 14 April 2021, the applicant attempted to file an application for leave to appeal against conviction pursuant to s 326A of the *Criminal Procedure Act 2009* ('the Act') — a provision which permits a second or subsequent appeal to this Court.

5 In order for an applicant to be granted leave for a second or subsequent appeal, the Court must be satisfied that there is 'fresh and compelling evidence that should, in the interests of justice, be considered on an appeal'.[7] Evidence is 'fresh' if it was not adduced at the trial and could not, even with the exercise of reasonable diligence, have been adduced at the trial. Section 326C(3)(b) provides that evidence is 'compelling' if:

1 Contrary to s 83A(4) of the *Crimes Act 1958*.
2 Contrary to s 314(1) of the *Crimes Act 1958*.
3 Contrary to s 82(1) of the *Crimes Act 1958*.
4 Contrary to s 192B(1) of the *Crimes Act 1958*.
5 Pursuant to s 18(1) of the *Sentencing Act 1991*.
6 *Taylor v The Queen* (2019) 59 VR 163 ('First Reasons').
7 See s 326C of the Act.

(i) it is reliable; and

(ii) it is substantial; and

(iii) either —

(A) it is highly probative in the context of the issues in dispute at the trial of the offence; or

(B) it would have eliminated or substantially weakened the prosecution case if it had been presented at trial.

6 The principles governing applications for leave to appeal pursuant to s 326A were recently summarised by this Court in *Meade v The Queen*.[8]

7 In his application, the applicant identifies two 'notes' which he said had recently been provided to him by the Department of Home Affairs, 'when responding to a mandatory deportation from Australia under s 501 of the *Migration Act 1958*'.

8 The first 'note' is described by the applicant as:

> The informant's case narrative within which he states, 'THE MATTER HAS BEEN RAISED CIVILLY BY THE VICTORIAN INSTITUTE OF TEACHING ON 12/08/2015'.

9 This note is said to constitute:

> [F]resh and compelling evidence that shows the prosecution knew my case was civil and not criminal yet still proceeded to have it heard as a criminal matter. This is an abuse of power.

10 In relation to the second 'note', the applicant described this as 'a list of alleged aliases held by the police'. The applicant contended that a review of the list confirmed that three of the charges of which he was convicted[9] 'are fraudulent in that they include two names that are falsely presented as aliases'. As it was put in his application, the applicant said:

> This list now obtained show these two names are not aliases of the accused and the informant knowingly attempted to pervert the course of justice by presenting fraudulent information within these three charges to deceive the Court and mislead the jury.

[8] [2021] VSCA 74, [7].

[9] Charges 4, 8 and 11. As to which charges, see First Reasons [26]-[28], [40]-[41] and [46]-[48].

11 The grounds in the application for leave to appeal then go on to refer to research done by the applicant, a review of his trial by a 'prominent solicitor and barrister from interstate', other arguments that do not appear to have anything to do with the discovery of evidence that might be called 'fresh and compelling' within the meaning of s 326C of the Act, various attempts to re-litigate matters which were the subject of the applicant's original application for leave to appeal, and other matters of a more opaque nature.

12 On 6 May 2021, Pedley JR wrote to the applicant advising him that his application for leave to appeal against conviction, together with other supporting documents which the applicant had attempted to file,[10] had been rejected pursuant to r 1A.04 of the *Supreme Court (Criminal Procedure) Rules 2017*, because these documents, if filed and sealed, would amount to an abuse of process.

13 The applicant objected to the Registrar's decision to refuse to seal and accept his documents for filing. Accordingly, the matter was referred to us for a review of the Registrar's decision pursuant to r 1A.04(4).

14 Having reviewed the applicant's documents for ourselves, it is plain that the Registrar was right to refuse to seal and accept them for filing. There is no reference in any of the documents to evidence that could realistically be called 'compelling' within the meaning of s 326C of the Act. Accepting the applicant's contentions at their highest, there is simply no new evidence (fresh or otherwise) which could be described as either 'highly probative in the context of the issues in dispute at the trial' or which 'would have eliminated or substantially weakened the prosecution case if it had been presented at trial'.[11]

15 The application for leave to appeal which the applicant seeks to file has no prospects of success whatsoever. It is totally without merit. The best that might be said for it is

[10] An affidavit affirmed by the applicant on 14 April 2021 and a document headed 'Summary of Relevant Facts', also dated 14 April 2021.

[11] See s 326C(3)(b)(iii).

that it is perhaps one step above a 'jumble of gobbledygook'.[12] It is plainly an abuse of process, and the Registrar was correct to so conclude.

16 It follows that the applicant's application to review the Registrar's decision to refuse to seal and accept his documents for filing must be refused.

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[12] See *Bradley v The Crown* [2020] QCA 252 (Sofronoff P, with whom Mullins JA and Boddice J agreed).